

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

DWIGHT DEVANE BYRD,

Plaintiff,

v.

CIVIL ACTION NO. 5:06-cv-00302

PERRY SKAGGS,

Defendant.

MEMORANDUM OPINION

By Standing Order entered on July 21, 2004, and filed in this case on April 26, 2006, this action was referred to United States Magistrate R. Clarke VanDervort for submission of proposed findings and a recommendation [PF&R]. Magistrate Judge VanDervort filed his PF&R on January 25, 2008 [Docket 28]. In that filing, the magistrate judge recommended that this Court grant Defendant's Motion to Dismiss, or in the Alternative Motion for Summary Judgment [Docket 20], and dismiss Plaintiff's Complaint.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, this Court need not conduct a *de novo* review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). *See also Page v. Lee*, 337 F.3d 411 (4th Cir. 2003); *Johnson v Zema Sys. Corp.*, 170 F.3d 734 (7th Cir. 1999) (if party fails to object to magistrate judge's report and recommendation in district court, she waives appellate review of both factual and legal questions; if party objects in district court on some issues and not others,

she waives appellate review of issues to which she has not objected). After being granted an extension of time to do so, Plaintiff timely filed objections on March 3, 2008.

I. ANALYSIS


The full factual and procedural history of this action is set forth in the PF&R. In short, Plaintiff, an inmate at FCI Beckley, alleges that Defendant Perry Skaggs, a housing unit officer at FCI Beckley, improperly confiscated Plaintiff's personal property during a search of his locker and cell on August 24, 2005. Magistrate Judge VanDervort recommends dismissal of Plaintiff's Complaint because: (1) to the extent the Complaint states a negligence claim, Plaintiff has not come forward with sufficient evidence to support that claim; and (2) to the extent the Complaint states a claim under *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), Plaintiff has failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997e(a).

In his objections, Plaintiff only makes conclusory objections to the PF&R, which are not sufficient to constitute proper objections. The Court has reviewed the PF&R and agrees with the findings and recommendations contained therein.

II. CONCLUSION

Based on the above, the Court adopts the findings and recommendations contained in the PF&R, **GRANTS** Defendant's Motion to Dismiss, or in the Alternative Motion for Summary Judgment [Docket 20], and **DISMISSES** Plaintiff's Complaint. A Judgment Order will be entered this day implementing the rulings contained herein.

ENTER: March 7, 2008



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE